AKERMAN LLP
BRYAN M. LEIFER (SBN 265837)
Email: bryan.leifer@akerman.com
ROBERT R. YAP (SBN 263763)
Email: robert.yap@akerman.com
725 South Figueroa Street, 38th Floor
Los Angeles, California 90017-5433
Telephone: (213) 688-9500
Facsimile: (213) 627-6342

FILED
CLERK U.S. DISTRICT COURT
NOV 27 2013
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

Attorneys for Defendants
SUNTRUST MORTGAGE, INC. and
BANK OF AMERICA, N.A.

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION

SACV13-01865 JLS (PLAx)

BRYAN M. PAVALKO and MONICA L. PAVALKO,

Plaintiffs,

v.

SUNTRUST MORTGAGE INC., a business entity form unknown, BANK OF AMERICA, N.A., a business entity form unknown, and DOES 1-100, inclusive,

Defendants.

Case No.

[State of California, County of Orange Superior Court Case No. 30-2013-00684366-CU-OR-CJC]

DEFENDANTS SUNTRUST MORTGAGE, INC. AND BANK OF AMERICA, N.A.'S NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1332, 1441, AND 1446

[Filed concurrently with Request for Judicial Notice]

Complaint filed: October 29, 2013

TO THE HONORABLE COURT, ALL PARTIES HEREIN, AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants SunTrust Mortgage, Inc. (**SunTrust**) and Bank of America, N.A. remove this action from the Superior Court of the State of California for the County of Orange to the United States District Court for the Central District of California.

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AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

I.
STATEMENT OF THE CASE

1. On October 29, 2013, Plaintiffs Bryan M. Pavalko and Monica L. Pavalko (collectively, **plaintiffs**) commenced a civil action in the Superior Court of California for the County of Orange styled *Pavalko et al. v. SunTrust Mortgage, Inc. et al,* Case No. 30-2013-00684366-CU-OR-CJC.

2. Plaintiffs' entire action, and all claims for relief therein, arise from and relate to a first-lien deed of trust (**subject deed of trust**) dated July 8, 2005, which secured a loan (**subject loan**) in the original principal amount of $648,000 and encumbered the parcel of real property commonly referred to as 8461 Clarkdale Drive, Huntington Beach, California 92646 (**subject property**). SunTrust and Bank of America's (collectively, **defendants**) request for judicial notice (**RJN**), Exhibit "1" at 1-3.

II.
FEDERAL DIVERSITY JURISDICTION

3. This Court has jurisdiction over this matter under 28 U.S.C. § 1332 as it is a civil action between citizens of different states and as the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs.

A. Complete Diversity of Citizenship

4. Federal courts have jurisdiction over diversity cases in order to ensure that citizens of different states can adjudicate their disputes in a neutral forum. See *Bank of United States v. Devaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (Marshall, C. J.). For this reason, "[d]efendants may remove an action on the basis of diversity of citizenship if there is complete diversity between all named plaintiffs and all named defendants, and no defendant is a citizen of the forum State." *Lincoln Property Co. v. Roche*, 546 U.S. 81, 84 (2005).

5. Complete diversity of citizenship exists because plaintiffs are citizens of California, and both defendants are citizens of other states.

6. Plaintiffs are California citizens. "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." *Kanter v. Warner Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). "The courts have held that the determination of an individual's domicile involves a number of factors (no single factor controlling), including: **current residence**, voting registration and voting practices, **location of personal and real property**, location of brokerage and bank accounts, location of spouse and family, membership in unions and other organizations, place of employment or business, driver's license and automobile registration, and payment of taxes" (emphasis added). *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986). Plaintiffs are citizens of California as they admit that they "reside in the County of Orange, State of California" and as they claim ownership in the subject property, which is located in California. Complaint ¶¶ 1 and 3.

7. SunTrust is a diverse defendant. "A corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. § 1332(c)(1). The Supreme Court held that "'principal place of business' is best read as referring to the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's 'nerve center.' And in practice it should normally be the place where the corporation maintains its headquarters." *Hertz Corporation v. Friend*, 130 S.Ct. 1181, 1199 (2010). SunTrust is a citizen of Virginia as it is a Virginia corporation and as its headquarters are located in Richmond, Virginia. RJN, Ex. "2." Accordingly, SunTrust is not a citizen of California.

8. Bank of America is also a diverse defendant. Under 28 U.S.C. § 1348, as interpreted by the Supreme Court in *Wachovia Bank v. Schmidt*, 546 U.S. 303 (2006), "[t]he State in which the main office is located qualifies as the bank's 'home State' under the banking laws." *Wachovia Bank*, 546 U.S. at 307. As a result, Bank of America is a

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

citizen of North Carolina as its headquarters are located in Charlotte, North Carolina. RJN, Ex. "3." Bank of America is not a citizen of California.

9. "The citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1). It does not appear that fictitiously named defendants does 1 through 20 have been named or served, and their citizenship is irrelevant for the purposes of this removal.

B. The Matter in Controversy is Satisfied

10. Under 28 U.S.C. § 1332(a), the matter in controversy must exceed $75,000. The amount in controversy here exceeds this statutory minimum as the principal balance of the subject loan is $648,000 and as the subject property was last sold for the purchase price of at least $378,000.[1] Complaint ¶ 40; RJN, Exs. "1" at 2, "4," and "5" at 2.

11. Both the Supreme Court and the Ninth Circuit Court of Appeals have held that "it is well established that the amount in controversy is measured by the **value of the object of the litigation**" (emphasis added). *Hunt v. Washington State Apple Advertising Com'n*, 432 U.S. 333, 347 (1977); *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). In actions challenging the foreclosure of real property by the lender pursuant to a borrower's default on a mortgage loan, the value of the object of litigation is measured by either the value of the underlying loan or the value of the property securing the loan. *See Garfinkle v. Wells Fargo Bank*, 483 F.2d 1074, 1076 (9th Cir. 1973); *Cabriales v. Nationstar Loan Services*, 2010 WL 761081 (N.D.Cal. 2010); *Reyes v. Wells Fargo Bank, N.A.*, 2010 WL 2629785 (N.D.Cal. 2010); *Chapman v. Deutsche Bank Nat. Trust Co.*, 651 F.3d 1039, 1045 FN2 (9th Cir. 2011).

12. In their lawsuit, plaintiffs pray for injunctive relief pursuant to California Civil Code § 2924.12 to enjoin any trustee's sale of the subject property, and plaintiffs

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[1] The purchase price plaintiffs paid for the subject property in July 2002 equals the original principal balance of plaintiffs' $378,000 purchase money loan. RJN, Exs. "4" and "5" at 2.

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

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LOS ANGELES, CALIFORNIA 90017
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seek to "cease all foreclosure activity on the Subject Property" Complaint ¶ 74 and at 24. As such, plaintiffs' entire action arises from and relates to the subject loan and any nonjudicial foreclosure proceedings on the subject property pursuant to their default. The value of the object of litigation (i.e. the matter in controversy) is therefore properly measured as either the unpaid principal balance of the $648,000 subject loan or the $378,000[2] value of the subject property based on the purchase price plaintiffs paid. Complaint ¶ 40; RJN, Exs. "1" at 2, "4," and "5" at 2. Both of these amounts exceed the $75,000.00 jurisdictional minimum thereby satisfying the matter in controversy requirement. Indisputably, the United States District Court has subject matter jurisdiction over plaintiffs' action.

III.
ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

13. Under 28 U.S.C. § 1446(b), "[t]he notice of removal of a civil action or proceeding shall be filed within **thirty days** after the receipt by the defendant…of a copy of the initial pleading…or within **thirty days** after the service of summons upon the defendant" (emphasis added). This thirty-day period begins to run from when the removing defendant is served and not from when the first defendant is served. *Destifino v. Reiswig*, 630 F.3d 952, 956 (9th Cir. 2011). Plaintiffs allege that they served both defendants on October 30, 2013. RJN, Exs. "6" and "7." Defendants timely filed this notice of removal within thirty days of plaintiffs' purported service.

14. True and accurate copies of the summons, complaint, and all process and pleadings received by SunTrust are attached hereto as Exhibit "A."

15. Removal of this action to this Court is proper as the Orange County Superior Court where this action commenced is located within this Court's jurisdiction.

[2] The purchase price plaintiffs paid for the subject property in July 2002 equals the original principal balance of plaintiffs' $378,000 purchase money loan. RJN, Exs. "4" and "5" at 2.

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
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16. Pursuant to 28 U.S.C. § 1446(d), defendants shall promptly file a notice of its removal of this action with the clerk of the Orange County Superior Court where this action commenced, and defendants shall promptly serve plaintiffs and any parties who have appeared with this notice of removal as well as the notice to be filed in the California Superior Court.

IV.
CONCLUSION

17. By this notice of removal and the associated attachments, defendants do not waive any objections they may have as to service, jurisdiction or venue, or any other defenses or objections they may have to this action. Defendants do not intend any admission of fact, law or liability by this notice, and expressly reserve all defenses, motions, and/or pleas. Defendants pray that plaintiffs' action be removed to the United States District Court, that all further proceedings in the California Superior Court be stayed, and that defendants receive all relief to which they are entitled.

Dated: November 27, 2013

Respectfully submitted,

AKERMAN LLP

By: [signature]
Bryan M. Leifer
Robert R. Yap
Attorneys for Defendants
SUNTRUST MORTGAGE, INC. and
BANK OF AMERICA, N.A.

EXHIBIT A

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

10/29/2013 at 09:43:00 AM
Clerk of the Superior Court
By Diana Cuevas,Deputy Clerk

NOTICE TO DEFENDANT: SUNTRUST MORTGAGE, INC., a
(AVISO AL DEMANDADO): business entity form unknown, BANK OF AMERICA, N.A., a business entity form unknown, and DOES 1-100, inclusive

YOU ARE BEING SUED BY PLAINTIFF: BRYAN M. PAVALKO and
(LO ESTÁ DEMANDANDO EL DEMANDANTE): MONICA L. PAVALKO

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

CASE NUMBER: *(Número del Caso):* 30-2013-00684366-CU-OR-CJC

Orange County Superior Court
Central Justice Center
700 Civic Center Drive West
Santa Ana, CA 92702

Judge Gregory H. Lewis

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Joseph R. Manning, Jr. SBN 223381 949-200-8755 866-843-3308
Law Offices of Joseph R. Manning, Jr., APC
4667 MacArthur Blvd., Suite 150
Newport Beach, CA 92660

DATE: *(Fecha)* 10/29/2013 ALAN CARLSON, Clerk of the Court Clerk, by *(Secretario)* [signature] Diana Cuevas, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☒ on behalf of *(specify)*: Suntrust Mortgage Inc

under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☒ by personal delivery on *(date)*: 10-30-13

Page 1 of 1

Joseph R. Manning, Jr., Esq. (State Bar No. 223381)
THE LAW OFFICES OF JOSEPH R. MANNING, JR.
A PROFESSIONAL CORPORATION
4667 MacArthur Blvd., Suite 150
Newport Beach, CA 92660
(949) 200-8755
(866) 843-8308

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
10/29/2013 at 09:43:00 AM
Clerk of the Superior Court
By Diana Cuevas,Deputy Clerk

Attorneys for Plaintiffs BRYAN M. PAVALKO and MONICA L. PAVALKO

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE- CENTRAL JUSTICE CENTER

BRYAN M. PAVALKO and MONICA L. PAVALKO,

Plaintiffs,

v.

SUNTRUST MORTGAGE, INC., a business entity form unknown, BANK OF AMERICA, N.A., a business entity form unknown, and DOES 1-100, inclusive,

Defendants.

Case No.: 30-2013-00684366-CU-OR-CJC

Judge Gregory H. Lewis

COMPLAINT FOR DAMAGES AND EQUITABLE RELIEF:

1. **VIOLATION OF CAL. CIVIL CODE §2923.6**
2. **VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §17200**
3. **NEGLIGENCE**
4. **DEMAND FOR ACCOUNTING**

DEMAND FOR JURY TRIAL

Plaintiffs BRYAN M. PAVALKO and MONICA L. PAVALKO ("Plaintiffs"), by their attorney, for causes of action against Defendants, SUNTRUST MORTGAGE, INC. and BANK OF AMERICA, N.A., and DOES 1 through 100, inclusive (hereinafter collectively referred to as "Defendants"), allege the following on information and belief:

I.

INTRODUCTION

1. Plaintiffs own the subject property located at 8461 Clarkdale Drive, Huntington Beach, CA 92646 (the "Subject Property").
2. Plaintiffs bring this action against Defendants and DOES 1 to 100 based on the following:

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4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

a. Defendants' violations of California Civil Code §2923.6;

b. Defendants' violation of California Business & Professions Code §17200 by engaging in unlawful, unfair and/or fraudulent business practices as part and parcel to unsafe and unsound banking procedures;

c. Defendants' negligence in assessing Plaintiffs' loan for any and all foreclosure prevention alternatives, including a loan modification; and

d. Unlawful billing practices.

II.

PARTIES

3. At all times mentioned herein, Plaintiffs BRYAN M. PAVALKO and MONICA L. PAVALKO are individuals who reside in the County of Orange, State of California.

4. Upon information and belief, Defendant SUNTRUST MORTGAGE, INC. ("SunTrust") is a business organization of unknown form doing business in the State of California.

5. Upon information and belief, Defendant BANK OF AMERICA, N.A. ("Bank of America") is a business organization of unknown form doing business in the State of California.

6. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as DOES 1-100, inclusive, and therefore, sues these Defendants by such fictitious names. Plaintiffs will seek leave of Court to amend this Complaint to allege their true names and capacities when they have been ascertained.

7. Plaintiffs are informed and believe, and based thereon, allege that at all times mentioned in this complaint Defendants were the agents, servants, representatives, partners and/or employees of co-Defendants, and, by engaging in the actions mentioned below, were, unless otherwise alleged, acting within the course and scope of their authority as such agent, servant, representative, partner, and/or employee, with the permission and consent of co-Defendants.

8. Plaintiffs are informed and believe, and based thereon, allege that each of said Defendants is, in some manner, legally responsible for the unlawful actions, unlawful policies, and unlawful practices hereinafter alleged, and that Plaintiffs' damages were proximately caused by Defendants. Plaintiffs will seek leave of Court to amend this Complaint to set forth the

JOSEPH R. MANNING, JR., ESQ.
4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

appropriate charging allegations along with the true names and capacities of said Defendants when they have been ascertained.

9. Any allegations about acts of any corporate or other business Defendants means that the corporation or other business did the alleged acts through its officers, directors, employees, agents, and/or representatives, while they were acting within the actual or ostensible scope of their authority.

III.

JURISDICTION AND VENUE

10. Venue and jurisdiction are proper in this Court because injury and damages to Plaintiffs occurred in this jurisdictional area, and the Subject Property is located in this jurisdictional area.

11. This Court has subject-matter jurisdiction over the causes of action alleged in this Complaint because this Court is a court of general subject-matter jurisdiction and is not otherwise excluded from exercising subject-matter jurisdiction over said causes of action.

12. This Court has personal jurisdiction over Defendants because each Defendant resides in, is incorporated in, has its main place of business in, and/or conducts business in the State of California, and a substantial portion of the acts, omissions, events, and transactions constituting the causes of action alleged herein occurred within the State of California. CCP § 410.10.

13. This Court is the appropriate venue for this action under Cal. Code of Civil Proc. §§ 395 & 395.5 because the acts that give rise to the causes of action alleged herein occurred in the County of Orange, State of California, and the Subject Property is located in this county. Plaintiffs hereby designate the County of Orange, State of California, as the place of proper venue.

IV.

DEMAND FOR JURY TRIAL

14. Plaintiffs hereby respectfully request a trial by jury on all appropriate issues raised in this Complaint.

///

JOSEPH R. MANNING, JR., ESQ.
4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

V.

THE CALIFORNIA HOMEOWNER'S BILL OF RIGHTS: Effective on January 1, 2013

15. Plaintiffs sue under several causes of action, among them, one (1) new statute in the California Homeowner's Bill of Rights ("HBOR"), effective on January 1, 2013: Civil Code §2923.6 (Defendants' evaluation of a Plaintiffs' loan for any and all foreclosure prevention alternatives, and obligatory additional evaluation based on a material change in Plaintiffs' financial circumstances).

16. California's housing crisis has had a devastating economic impact on the state and local governments. From 2007 to 2011 alone, there were over 900,000 completed foreclosure sales. In 2011, 38 of the top 100 hardest hit ZIP Codes in the nation were in California. All of this foreclosure activity has adversely affected property values and resulted in less money for schools, public safety, and other public services.

17. In addition, according to the Urban Institute, every foreclosure imposes significant costs on local governments, including an estimated nineteen thousand two hundred twenty-nine dollars ($19,229) in local government costs. The foreclosure crisis continues in California, and there remain more than two million "underwater" mortgages in California.

18. **Legislative Intent.** The legislature found and declared that it is essential to the economic health of California to mitigate the negative effects on the state and local economies and the housing market that are the result of continued foreclosures by **modifying the foreclosure process to ensure that borrowers who may qualify for a foreclosure alternative are considered for, and have a meaningful opportunity to obtain, available loss mitigation options.** These changes to California's foreclosure process are essential to ensure that the current crisis is not worsened by unnecessarily adding foreclosed properties to the market when an alternative to foreclosure may be available. Avoiding foreclosure, where possible, will help stabilize the state's housing market and avoid the substantial, corresponding negative effects of foreclosures on families, communities, and the state and local economy.

19. As a result, in February 2012, Attorney General Harris announced the California "Homeowner

JOSEPH R. MANNING, JR., ESQ.
4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

Bill of Rights," designed to protect homeowners from unfair practices by banks and mortgage companies and to help consumers and communities cope with the state's urgent mortgage and foreclosure crisis. Attorney General Harris claims that "this legislation will make the mortgage and foreclosure process more fair and transparent, which will benefit homeowners, their community, and the housing market as a whole."

20. On July 11, 2012, California Governor Jerry Brown signed into law the HBOR (also known as "AB 278" or "SB 900"), marking California as the first U.S. state to adopt into law the residential mortgage foreclosure reform principles outlined in the February 2012 National Mortgage Settlement with the nation's top five mortgage services. The HBOR makes changes to non-judicial foreclosure protocols for first lien residential mortgage loans.

21. The HBOR provides protections for borrowers and struggling homeowners by prohibiting a series of inherently unfair bank practices that have needlessly forced thousands of homeowners into foreclosure. Essentially, this law ensures that qualified first mortgage borrowers are afforded the right to explore any available alternative to foreclosure with their mortgage servicer before a California non-judicial foreclosure can commence and/or be completed through foreclosure sale.

22. The HBOR offers borrowers the following protections:

a. **Burden of Compliance on the "Mortgage Servicer:"** The burden of compliance is placed on the "mortgage servicer," the person servicing the loan or is responsible for interacting a borrower, either as the current owner of the note or as the owner's agent;

b. **Foreclosure Prevention Alternative:** "Foreclosure prevention alternative" is broadly defined as any available loss mitigation option, including first lien loan modification;

c. **Disclosure:** Mortgage servicers must include a disclosure in the borrower's pre-Notice of Default outreach package that includes (i) a statement that the borrower may be entitled to certain protections, and (ii) a statement informing the borrower of his/her right to request a copy of his/her note and deed of trust, any assignment of the deed of trust required to demonstrate the mortgage servicer's right to foreclosure, and the borrower's payment history since he/she was last less than sixty (60) days past due;

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4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

d. **Notice of Default and Declaration of Compliance:** A mortgage servicer, mortgagee, trustee, beneficiary or authorized agent MAY NOT record a Notice of Default until a disclosure (as described above) is sent to the borrower, AND thirty (30) days after either (i) initial contact is made, to assess the borrower's financial situation and explore options for foreclosure avoidance, OR (ii) the due diligence requirements for locating the borrower have been met with no borrower response. In addition, a declaration of compliance must be attached to the Notice of Default;

e. **Restriction on dual track foreclosure:** Mortgage servicers are restricted from advancing the foreclosure process while a borrower is seeking a loan modification. When a borrower completes an application for a loan modification, the foreclosure process is essentially on-hold until the complete application has been reviewed;

f. **Guaranteed Single Point of Contact:** Borrowers are guaranteed and provided one or more direct means of communication with their single point of contact, as they navigate the system and try to keep their homes -- a person or team at the bank who know(s) the facts of their case, has their paperwork, and can get the borrowers a decision about their application for a loan modification;

g. **Restriction on "Robo-Signing:"** The recording of "robodocs," or "robo-signing," the process through which banks approved fraudulently signed mortgage documents in the foreclosure process, is PROHIBITED. All mortgage documents, including notices of default and supporting declarations, notices of sale, assignments of deed of trust, and substitutions of trustee recorded in connection with a non-judicial foreclosure, as well as declarations filed in court with respect to any foreclosure proceeding, must be accurate, complete and supported by competent and relevant evidence;

h. **Restriction on Charges and Fees:** Mortgage servicers may not charge any application, processing, or other fee for any first lien loan foreclosure prevention alternative, and while a foreclosure prevention alternative is being considered or denial is being appealed, a mortgage servicer cannot collect late fees;

i. **Private right of action:** Borrowers are afforded the following private right of action:

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4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

i. Up until a foreclosure sale is completed, borrowers may seek a court injunction for a material violation of these protections, and may seek attorney's fees.

ii. After a foreclosure sale is completed, borrowers can seek court recovery for actual damages suffered as a result of a material violation, that was not corrected prior to the foreclosure sale, plus attorney's fees, and, upon a court's finding of willful, reckless, and/or intentional material violations committed, borrowers can be awarded the greater of $50,000 civil money penalty or treble damages.

23. According to the California legislature, the Bill of Rights brings basic fairness, accountability, and transparency to the state's mortgage and foreclosure process, and it is necessary to provide stability to California's statewide and regional economies and housing market.

VI.

FACTUAL BACKGROUND

Defendants' Marked-Up and Unnecessary Fees for Default-Related Services

24. Plaintiffs allege, upon information and belief, that in Defendants' loan servicing operations, Defendants follow a strategy to generate fraudulently concealed default-related fee income. Rather than simply obtaining default-related services directly from independent third-party venders, and charging borrowers for the actual cost of these services, Defendants assess borrowers' accounts for services that are unnecessary and they unlawfully add additional undisclosed profits on to the charges before they are assessed on borrowers' accounts.

25. Upon information and belief, Defendants' scheme works as follows: Defendants order default-related services from their subsidiaries and affiliated companies, who, in turn, obtain the services from third-party vendors. The third-party vendors charge Defendants for their services. Defendants, in turn, charge borrowers a fee that is significantly marked-up from the third-party vendors' actual fees for the services. As a result, even though the mortgage market has collapsed, and more and more borrowers are following into delinquency, Defendants continue to earn substantial profits by assessing undisclosed, marked-up fees for default-related services on borrowers' accounts.

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26. The mortgage contract between a lender and a borrower consists of two (2) documents: the Promissory Note ("Note") and the Mortgage or Deed of Trust ("Security Instrument"). The mortgage contracts serviced by Defendants are substantially similar because they conform to the standard Fannie Mae/Freddie Mac form contract. These contracts contain form language regarding what occurs if borrowers default on their loans. The Security Instrument authorizes the loan services, in the event of default, to:

> pay for whatever is reasonable or appropriate to protect the note holder's interest in the property and rights under the security instrument, including protecting and/or assessing the value of the property, and securing and/or repairing the property.

27. The Security Instrument further provides that any such amounts disbursed by the servicer shall become additional debt of the borrower secured by the Security Instrument and shall bear interest at the Note rate from the date of disbursement. The Note provides that the note holder:

> will have the right to be paid back by [the borrower] for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorney's fees.

28. Thus, the mortgage contract allows the servicer to pay for default-related services when necessary or appropriate, and to be reimbursed by the borrowers, but it *does not authorize* the servicer to mark-up the actual cost of those services to make a profit.

29. As discussed above, by charging marked-up fees, Defendants violate their agreements with borrowers because, among other things, charges that exceed the actual cost of the services provided are neither reasonable nor appropriate to protect the Note holder's interest in the property and the rights under the Security Instrument.

30. Furthermore, the wrongful nature of the marked-up fees is demonstrated by the fact that Defendants do not disclose to borrowers that the fees assessed on their accounts are marked-up from the amount actually charged by the vendor.

31. Plaintiffs are informed and believe, and on that basis, allege that Defendants conceal these marked-up fees for default-related services on borrowers' accounts, including Plaintiffs', by identifying the charges only as "Miscellaneous Fees," "Corporate Advances," "Other Fees" or

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"Advances" on borrowers' statements.

32. Plaintiffs are informed and believe, and on that basis, allege that under the "Miscellaneous Fees," "Corporate Advances," "Other Fees" or "Advances" categories on borrowers' statements, Defendants also assess unnecessary and unreasonable fees for property inspections. Although such inspections purportedly are conducted to guard against property loss, Defendants' practices are designed to ensure that these fees are charged to as many accounts as possible, even if the inspections are inappropriate, unnecessary, or unreasonable.

33. Plaintiffs are informed and believe, and on that basis, allege that even if the property inspections were properly performed and actually reviewed by someone at the bank, Defendants' continuous assessment of fees for these inspections on borrowers' accounts is still improper and unreasonable because of the frequency with which they are performed. If the first inspection report shows that the property is occupied and in good condition, it is unnecessary and inappropriate for Defendants to automatically continue to order monthly inspections. Nothing in the reports justifies continued monitoring.

34. As a result of Defendants' concealment of these unlawful fees, thousands of unsuspecting borrowers, including Plaintiffs, are cheated out of millions of dollars.

__Plaintiffs' Injuries as a Result of Defendants' Practices__

35. Plaintiffs allege, upon information and belief, that the assessment of these marked-up fees can make it impossible for borrowers to become current on their loan. Charges for default-related services can add hundreds or thousands of dollars to borrowers' loans over time, driving them further into default.

36. When borrowers, including Plaintiffs, get behind on their mortgage, and fees for these default-related services are added on to the past-due principal and interest payments, Defendants' practices make it increasingly difficult for borrowers to ever bring their loan current. Even if borrowers pay the delinquent principal and interest payments, the marked-up fees for default-related services ensure that borrowers stay in default. After paying delinquent principal and interest, although the next payment comes in on time, often through automatic payment deductions from borrowers' bank accounts, part of the payment is applied to the fees first, so

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there is not enough to cover the entire monthly payment. This makes the payment late, creating a cascade of more fees and arrears, which keeps borrowers in delinquency. By the time borrowers are aware, Defendants are threatening to foreclose unless a huge payment is made, and the weight of these unnecessary fees drops borrowers into a financial abyss.

37. As a result of Defendants' practices, borrowers, including Plaintiffs, are forced to move deeper into default, and suffer damage to their credit scores. Defendants provide information about borrowers' payment history to credit reporting companies, including whether they have been late with a payment or missed any payments. By keeping borrowers in default with these practices, Defendants affect whether borrowers can get a loan in the future, and what borrowers' interest rate will be on such loans.

38. Additionally, as a result of Defendants' practices, borrowers, including Plaintiffs, are wrongfully driven into foreclosure.

Plaintiffs' Financial Struggle and Pursuit of Foreclosure Prevention Alternatives

39. The Subject Property is Plaintiffs' principal residence and is owner-occupied.

40. In 2005, Plaintiffs entered into a written loan agreement, and obtained a mortgage loan in the amount of $648,000 (the "Loan"), secured by the Subject Property through a Deed of Trust (recorded July 18, 2005), then and now the principal residence of Plaintiffs.

41. The Corporate Assignment of the Deed of Trust recorded on May 31, 2013 identifies Beneficiary as "Bank of America, N.A."

42. Plaintiffs performed dutifully under the Loan, as required, until 2012 when Plaintiff Monica Pavalko's interior designer business declined due to the economy in which she lost all her employees and had been struggling to make ends meet. In addition, Plaintiff Monica Pavalko was recently diagnosed with spinal stenosis in which surgery was necessary.

43. Thereafter on or around October 2012, Plaintiffs contacted SunTrust, the mortgage servicer, to inquire about loan modification and avoid serious default on the loan obligation. Plaintiffs explained that her business had declined and due to her recent diagnosis, it would be difficult to maintain the mortgage payment. SunTrust, through its authorized representative, encouraged Plaintiffs to apply for a loan modification and indicated SunTrust would send her the paperwork

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to start the process.

44. On or around October 26, 2012, Plaintiffs received a letter from SunTrust stating their Home Preservation Client Representative was Gail Harris. Plaintiffs immediately contacted Gail Harris via email and left numerous phone messages, however would not receive a response back.

45. Plaintiffs submitted a loan modification package via certified mail with all the requested documents directly to Defendant SunTrust. On or around November 2012, Defendant SunTrust confirmed receipt of the loan modification package and began the process.

46. Thereafter, on or around February 2013, Plaintiffs received their mortgage statement which included a "repay escrow advance" that had not previously been on the mortgage statement. Plaintiffs immediately contacted Defendant SunTrust and spoke with representative Jaime Wallace who explained that an escrow was added to their account on or around December 3, 2012 during the loan modification review process. Plaintiffs were never advised this would occur and never received prior notifications. Due to this added escrow account, Plaintiffs' monthly loan payment increased by $1,429.41 which brought their monthly payments to $5,210.97.

47. Plaintiffs then called Defendant SunTrust again and spoke to representative Rashon Vendable and he stated "the escrow account should never have been added to their mortgage account." Representative Rashon Vendable advised Plaintiffs to contact the escrow department to have the escrow removed since they were never notified that it was being added and there was no loan modification in place.

48. Plaintiffs then spoke to representative Gail Harris who did not have an explanation as to why the escrow was added, however suggested that they submit a new request for a loan modification, in which Plaintiffs immediately submitted with all the necessary financial information.

49. Due to this enormous increase in Plaintiffs' monthly mortgage payment, Plaintiffs began being late, however continued to follow up throughout March 2013 to June 2013 with representative Gail Harris for Defendant SunTrust and her supervisor Marya Simmons to check status of the loan modification review.

50. On or around May 2013; Plaintiffs received an "annual escrow account statement" which

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showed a completely different monthly payment amount including the escrow.

51. Thereafter, on or around May 24, 2013, Plaintiffs were offered a Trial Payment Plan ("TPP") in the amount of $3,627.95 per month for three months to begin July 1, 2013.

52. Plaintiffs agreed to the TPP, and pursuant to the terms of the TPP, sent in their first TPP payment by the specified due date, and thereafter, timely made the required monthly payments for all three (3) months until September 2013.

Defendant SunTrust Failure to Fairly Evaluate Plaintiffs' Application and Plaintiffs' Documented Material Change in Circumstances Under the Homeowner's Bill of Rights

53. Pursuant to Civil Code §2923.6(g), under HBOR, the mortgage servicer shall not be obligated to evaluate applications from borrowers who have already been evaluated or afforded a fair opportunity to be evaluated, unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and that change is documented by the borrower and submitted to the mortgage servicer.

54. As alleged herein, **Plaintiffs have not been fairly evaluated** for a loan modification, nor have **they been afforded a fair opportunity** to be evaluated ***and*** there has been **a material change in Plaintiffs' financial circumstances**, and that change has been documented and submitted to SunTrust, the mortgage servicer.

55. Had SunTrust not added an escrow account without notice to Plaintiffs, Plaintiffs would not have accrued any delinquent amount which Defendant SunTrust was attempting to add onto the back end of the loan. Accordingly, Plaintiffs were never afforded a fair opportunity to be evaluated and was never fairly evaluated.

56. In addition, as set forth herein, Plaintiffs have experienced a material change in financial circumstances since the date of their previous application for a first lien loan modification. Specifically, Plaintiffs' household income has decreased due to having to take out a loan of $25,000 for their son's education and therefore having to allocate a portion of their income towards these additional expenses. Plaintiffs' attorney documented the change in financial circumstances and submitted it to Defendants SunTrust in a letter dated October 25, 2013. A true and correct copy of this letter to Defendants, along with the fax confirmation sheets, is

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attached and incorporated herein as Exhibit A. Defendants have failed to respond or otherwise agree to evaluate Plaintiffs based on the documented material change.

57. At this time, Plaintiff is in possession of the Subject Property and no trustee's sale has occurred. As a result, the instant action became necessary.

58. Plaintiffs have been unable to cure the default because of the substantial arrearages, which include unnecessary fees added to the loan balance, and even after submitting and resubmitting updated financial documents and complete loan modification applications at SunTrust's direction, Plaintiffs have been unable to negotiate a mortgage payment that they can afford.

59. Plaintiffs' claims are simple: when large financial institutions promise to modify eligible loans to prevent foreclosures and taxpaying homeowners live up to their end of the bargain, homeowners expect that promise to be kept, especially when those large financial institutions are acting under the guidance of a federal program specifically targeted at preventing foreclosures.

60. Unbeknownst to Plaintiffs, Defendants, acting as lenders, mortgage servicers, trustees, and/or beneficiaries, received, and continue to receive, a financial incentive on each loan modification application a borrower submits. Because of this type of incentive, Defendants benefit from allowing Plaintiffs' modification requests to become stale and advising Plaintiffs to re-apply for a modification, rather than actually reviewing Plaintiffs' application.

61. Defendant SunTrust wrongfully delayed Plaintiffs' requests for a foreclosure prevention alternative due to its own ineffective and unreasonably slow processing systems, the financial incentives it received by asking Plaintiffs to submit multiple applications, and its failure to properly train its representatives to comply with Suntrust's obligations to borrowers.

62. The foregoing acts and material omissions of the Defendants herein alleged were undertaken willfully, persistently, intentionally, knowingly, and/or in gross or reckless disregard of Plaintiffs' notice and disclosure rights.

63. Defendants, as employers of the authorized representatives who had contact with Plaintiffs, had advanced knowledge of the unfitness of the employee representatives and employed such representatives with a conscious disregard of the rights or safety of others, or authorized/ratified

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the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.

64. Defendants are corporate employers. As such, their officers, directors, and/or managing agents had advanced knowledge of the willful and despicable conduct herein alleged and ratified the aforementioned acts of their authorized representatives and employees.

65. Plaintiffs have been harmed by Defendants' failure to provide accurate material disclosures and notices such that Plaintiffs can cure any alleged default and extinguish the transaction by operation of law.

66. Defendants are acting in concert to deprive Plaintiffs of their civil rights by attempting to take the Subject Property without due process of law.

67. Plaintiffs are ready, willing and able to enter into a loss mitigation program that is affordable for Plaintiffs and more profitable to Defendants than a foreclosure, and Plaintiffs are ready, willing and able to make such payments at the times required of them by law.

VI.

FIRST CAUSE OF ACTION

VIOLATION OF CAL. CIV. CODE §2923.6

(AS TO ALL DEFENDANTS)

68. Plaintiffs reallege and incorporate by reference all paragraphs above, as though fully set forth in this cause of action.

69. The HBOR, including Civil Code §2923.6, applies only to mortgages or deeds of trust that are secured by owner-occupied residential real property containing no more than four (4) dwelling units. For these purposes, "owner-occupied" means that the property is the principal residence of the borrower as indicated in loan documents. In this case, the Subject Property contains no more than four (4) dwelling units and is the principal residence of Plaintiffs, as indicated in the loan documents.

70. Pursuant to Civil Code §2923.6(g), under HBOR, the mortgage servicer shall not be obligated to evaluate applications from borrowers who have already been evaluated or afforded a fair opportunity to be evaluated for a first lien loan modification prior to January 1, 2013, or who

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have been evaluated or afforded a fair opportunity to be evaluated consistent with the requirements of this section, unless there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application and that change is documented by the borrower and submitted to the mortgage servicer.

71. Had SunTrust not added an escrow account without notice to Plaintiffs, Plaintiffs would not have accrued any delinquent amount which Defendant SunTrust was attempting to add onto the back end of the loan. Accordingly, Plaintiffs were never afforded a fair opportunity to be evaluated and was never fairly evaluated.

72. In addition, as set forth herein, Plaintiffs have experienced a material change in financial circumstances since the date of their previous application for a first lien loan modification. Specifically, Plaintiffs' household income has decreased due to having to take out a loan of $25,000 for their son's education and therefore having to allocate a portion of their income towards these additional expenses.

73. Plaintiffs' attorney documented the change in financial circumstances and submitted it to Defendants SunTrust in a letter dated October 25, 2013. (Exhibit A.) Defendants have failed to respond or otherwise agree to evaluate Plaintiffs based on the documented material change.

74. Pursuant to Civil Code §2923.6(g), SunTrust is obligated to evaluate Plaintiffs' application for any and all foreclosure prevention alternatives, including, but not limited to, a loan modification, and **Defendants must cease all foreclosure activity on the Subject Property.**

75. In addition, the law prohibits "dual tracking" – a mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or a notice of sale or conduct a trustee's sale while a "complete" first lien loan modification application is pending. Cal. Civ. Code §2923.6(c). Therefore, Defendants may not conduct a non-judicial foreclosure sale while Plaintiffs' application is in review.

76. The intent of the California Legislature in enacting HBOR was to address the consequences of the subprime mortgage crisis leading to declining real property values and historic levels of foreclosure. Given the vast and devastating impact of the crisis, the objective of the Bill of Rights was to make sure lenders, loan servicers, and their agents were communicating and

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working with borrowers in default to assess the borrowers' financial situation and discuss foreclosure alternatives before a foreclosure is initiated by recording a notice of default. The intent of the legislature is clear and the requirements that it has imposed are by no means arbitrary.

77. Defendants' failure to comply with Civil Code §2923.6 directly undermines the intent of the statute. This failure to adhere to the statute renders it essentially meaningless and, if the statue is not enforced, it will serve to perpetuate a cycle that results in far too many homeowners being rendered helpless. As a result, Defendants are liable to Plaintiffs for any and all statutory and/or actual damages which have resulted from their conduct.

78. In addition, Plaintiffs have incurred costs associated with the foreclosure action since its commencement, and Plaintiff seeks to be fairly evaluated for a foreclosure prevention alternative, pursuant to HBOR.

79. As a result of the above-described wrongful acts and omissions, Plaintiffs have been precluded from the rights granted borrowers by Civil Code §2923.6.

VII.

SECOND CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200

(AS TO ALL DEFENDANTS)

80. Plaintiffs reallege and incorporate by reference all paragraphs above, as though fully set forth in this cause of action.

81. Plaintiffs bring this action against Defendants pursuant to California *Business and Professions Code* §17200, *et seq.*, referred to as the Unfair Competition Law (the "UCL").

82. California *Business and Professions Code* §17200 prohibits "any unlawful, unfair or fraudulent business act or practice." For the reasons described herein, Defendants have engaged in unfair or fraudulent business acts or practices in violation of *Bus. and Prof. Code* §17200, *et. seq.*

83. The Court has jurisdiction over this action pursuant to California *Bus. and Prof. Code* §17200, *et seq.*, specifically *Bus. and Prof. Code* §17203, which provides that any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of

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competent jurisdiction; and the court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition; and *Bus. and Prof. Code* §17204, which provides for actions for any relief pursuant to the Unfair Competition Law ("UCL") to be prosecuted exclusively in a court of competent jurisdiction by any board, officer, person, corporation or association, or by any person acting for the interests of itself, its members or the general public.

84. At all times relevant to this Complaint, Defendants were lenders in the business of providing residential mortgages to the general public and were acting within the scope of that business with regard to the loan provided to Plaintiffs. Defendants have committed acts of unfair competition as proscribed by §17200 including the practices alleged herein against Plaintiffs.

85. Specifically, as fully set forth above, Defendants engaged in deceptive business practices with respect to mortgage loan servicing, foreclosure of residential properties and related matters by, among other things:

a. Engaging in a pattern and practice of misrepresenting to borrowers, including Plaintiffs, the likelihood of qualifying for a loan modification or other work out option, and inducing borrowers to continue with the modification review process while knowing that no such permanent modification would be forthcoming despite assurances otherwise;

b. Without complying with Civil Code §2923.6(g) by failing to fairly evaluate Plaintiffs' application, or afford Plaintiffs a fair opportunity to be evaluated, even after there has been a material change in Plaintiffs' financial circumstances, which was documented and submitted to the mortgage servicer;

c. Instituting improper or premature foreclosure proceedings to generate unwarranted fees; and

d. Concealing the true character, quality, and nature of their assessment of marked-up fees against Plaintiffs' account.

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86. In addition, *Bus. and Prof. Code* §17200 prohibits any "fraudulent business act or practice." Defendants' concealment of material facts, as set herein, was misleading and likely to deceive the public within the meaning of this section. This concealment was made with knowledge of its effect, and was done to induce Plaintiffs to pay the marked-up and/or unnecessary fees for default-related services.

87. Moreover, in the course and conduct of its loan servicing and collection, Defendant SunTrust omitted a true itemization that identifies the nature of each fee, and it failed to disclose the nature of the charges and fees assessed. Defendant SunTrust concealed the fact that the category identified as "Miscellaneous Fees" or "Other Charges" reflects marked-up and/or unnecessary fees that were never incurred by Defendants. Relying on Defendants, Plaintiffs and members of the general public believe they are obligated to pay the amounts specified in Defendants' communications for default-related services.

88. Plaintiffs relied on their reasonable expectation that Defendants complied with the plain meaning of the mortgage agreement, Notes, Security Instruments, court orders, and confirmed plans, and as a result, Plaintiffs relied on Defendants' disclosures about the fees on their statements, reasonably believing the "Other Charges," "Other Fees" or "Miscellaneous Fees" to be valid charges that were not unlawfully marked-up and/or unnecessary. Indeed, to trick borrowers into a sense of trust and to dissuade them from challenging Defendants' unlawful fee assessments, Defendants conceal their scheme by telling borrowers, in statements and other documents, that such fees are "allowed by borrowers' Note and Security Instrument," or that they are "in accordance with the terms of your mortgage." Had the true nature of the fees been disclosed to Plaintiffs, they would have been aware of the mark-ups and unnecessary nature of the fees, and Plaintiffs would have disputed the charges, not paid them.

89. These violations were and remain to be a matter of Defendants' standard corporate policy, and constitute a consistent pattern and practice of unlawful corporate behavior. Defendants' actions are against public policy, as the legislature enacted the Homeowner's Bill of Rights and, specifically, Civil Code §2923.6, as an emergency act, to slow the foreclosure process so that foreclosure could be avoided.

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90. Defendants' omissions of material facts, as hereinabove alleged, constitute "unlawful" practice because they violate Title 18 United States Code §1341, §1343, and §1962, California Civil Code §1572, §1573, §1709, §1710, and §1711, and the common law.

91. Defendants' acts and practices, as hereinabove alleged, constitute "unfair" business acts under *Bus. and Prof. Code* §17200, *et seq*., in that said acts and practices offend public policy and are substantially injurious to Plaintiffs and all consumers. Said acts and practices have no utility whatsoever; much less sufficient utility to outweigh the substantial harm to Plaintiffs, other consumers, and potential homeowners.

92. Defendants' acts and practices, as hereinabove alleged, constitute "fraudulent" business acts under §17200 in that said acts and practices are likely to deceive the public and affected consumers' legal rights and obligations. Defendants' acts, including, but not limited to, active deception, falsifying documents, failing to deliver material documents, and concealment, may preclude consumers from exercising rights to which they are entitled.

93. Defendants knew, or by the exercise of reasonable care, should have known, that the representations by their representatives as herein alleged were violations of public policy, Civil 2923.6, and other common law.

94. Plaintiffs are informed and believe, and based thereon, allege that the illegal acts of Defendants are a serious threat to Plaintiffs because these acts have allowed, or will allow, Defendants to wrongfully foreclose on the Subject Property, to transfer title to or interest in the Subject Property, and to cause the imminent eviction of Plaintiffs from their home. Because of Defendants' illegal actions, Plaintiffs will be forced out of their home. Such eviction will cause Plaintiffs to suffer further immediate and irreparable injury, loss, and damage.

95. As a direct and proximate result of Defendants' unlawful, unfair and fraudulent conduct alleged herein, Plaintiffs are in imminent risk of losing her home. The imminent threat and risk of foreclosure constitutes injury-in-fact because it is concrete and particularized as to the property in question and initiation of foreclosure proceedings puts Plaintiffs' interest in their property sufficiently in jeopardy to constitute injury under §17200.

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96. As a direct and proximate result of Defendants' unlawful, unfair, and fraudulent conduct alleged herein, Plaintiffs has lost equity in the home. Defendants' charging of marked up and excess fees has resulted in damage to Plaintiffs' tangible interest in their property. This loss of equity, which should be credited back to Plaintiffs, constitutes a loss of money.

97. Due to Defendants' unlawful, unfair, and fraudulent business practices, Plaintiffs have suffered severe a substantial ascertainable loss, and therefore, Defendants should be enjoined from continuing such practices pursuant to *Business and Professions Code* §17203 & §17204.

98. As a direct, proximate, and foreseeable result of the unlawful conduct of Defendants, their business acts or practices have caused injury to Plaintiffs; and Plaintiffs are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been obtained by Defendants as a result of such business act or practice.

99. In addition to the relief requested in the Prayer below, Plaintiffs seek the imposition of a constructive trust over, and restitution of, the monies collected and realized by Defendants.

VIII.

THIRD CAUSE OF ACTION

NEGLIGENCE

(AS TO ALL DEFENDANTS)

100. Plaintiffs reallege and incorporate by reference all paragraphs above, as though fully set forth in this cause of action.

101. At all times relevant herein, Defendants, acting as Plaintiffs' lender and servicer and beneficiary to Plaintiffs' loan, had a reasonable duty to exercise reasonable care and skill to maintain proper and accurate loan records, and to discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing of loan records, including, but not limited to:

a. Keeping an accurate accounting of Plaintiffs' mortgage payments, credits, and debits;

b. Disclosing to Plaintiffs the status of any foreclosure actions taken by Defendants;

c. Refraining from taking any action against Plaintiffs that they did not have the legal authority to do; and

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d. Providing Plaintiffs with all relevant information regarding the Loan.

102. In addition, Defendant SunTrust stepped outside its conventional duties as a lender and servicer and assumed additional responsibilities when it undertook efforts to consider borrowers, including Plaintiffs, for loss mitigation options, including, but not limited to, loan modifications.

103. Those additional responsibilities include the proper implementation of available foreclosure prevention alternatives, and following the new duties found in the California Homeowner's Bill of Rights with its provision against dual track foreclosures, so that Plaintiffs would be properly and fairly evaluated for a suitable foreclosure prevention alternative, including, but not limited to, a loan modification.

104. Plaintiffs allege, on information and belief, that Defendants breached their duty of care and skill to Plaintiffs, in the servicing of Plaintiffs' loan by, among other things:

a. Failing to fairly evaluate Plaintiffs' loan for an alternative to foreclosure, including a loan modification, even after a *material change in the borrowers' financial circumstances* has been documented and submitted to the mortgage servicer, pursuant to Civil Code §2923.6(g);

b. Engaging in a pattern and practice of making promises to Plaintiffs that SunTrust representatives knew would not be honored;

c. Sending Plaintiffs false and misleading advertisements misrepresenting the availability of options to save Plaintiffs' home and leading Plaintiffs to believe SunTrust would and could qualify Plaintiffs for a foreclosure prevention plan and avoid a trustee's sale all in a matter of days; and

d. Failing to sufficiently train loss mitigation staff and failure to maintain adequate systems for tracking borrower documents and information that are relevant to foreclosure and loss mitigation, so that Plaintiffs could receive consistent and accurate information from one phone call to the next, and the like; and

e. Wrongfully adding an escrow account without providing notice to Plaintiffs and failing to state the specific reasons as to why an escrow account was added.

105. Plaintiff alleges on information and belief, that as a result of Defendant SunTrust's negligence,

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Plaintiffs have suffered from (i) substantial arrearages, which include additional and unnecessary interest and fees; (ii) an adverse effect on their credit scores; (iii) a loss of the equity in the home; and (iv) being precluded from their rights and protections under the Homeowner's Bill of Rights.

106.Plaintiffs allege, on information and belief, that Plaintiffs' injury was a direct result of Defendant SunTrust's negligent conduct, as Defendant's misrepresentations of the availability of obtaining a foreclosure prevention alternative was a significant factor in causing Plaintiffs' injuries.

107.Plaintiffs allege, on information and belief, that Defendant SunTrust is responsible for Plaintiffs' injury due to the fact that Defendant benefited from denying Plaintiffs' requests for a foreclosure prevention alternative and advising them to reapply.

108.Plaintiffs allege, on information and belief, that the policy of preventing future harm favors imposing a duty of care on an entity in Defendants' positions. In fact, this is evidenced by the fact that the State of California, through legislation, has enacted the new Homeowner's Bill of Rights, which became effective on January 1, 2013, in an effort to prevent future harm from unnecessary and wrongful foreclosures.

109.Plaintiffs are informed and believe, and on that basis, allege that had Defendant SunTrust used proper skill and care in the handling of Plaintiffs' matter, Plaintiffs would have had a fair opportunity to avoid foreclosure proceedings, and Plaintiffs would have been able to enter into a loan modification that was affordable for Plaintiffs and more profitable to Defendants than a foreclosure.

110.As a direct and proximate result of the negligence and carelessness of Defendants and their representatives as set forth above, Plaintiffs have suffered, and continues to suffer, general and special damages in an amount to be determined at trial.

IX.

DEMAND FOR ACCOUNTING

111.Plaintiffs reallege and incorporate by reference all paragraphs above, as though fully set forth in this cause of action.

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112.The elements for a claim for accounting are: (i) a fiduciary relationship or other circumstances appropriate to the remedy, and (ii) a balance due from to Defendant to Plaintiffs that can only be ascertained by an accounting.

113.Defendants have held themselves out to be Plaintiffs' creditor and mortgage servicer. As a result of this purported relationship with Plaintiffs, said Defendants have a duty to Plaintiffs to properly account for payments made by Plaintiffs. A fiduciary relationship between the parties is not required to state a cause of action for accounting. All that is required is that some relationship exists that requires an accounting.

114.The mortgage contract between Defendants and Plaintiffs allow Defendants to pay for default-related services when necessary or appropriate, and to be reimbursed by the borrowers, but it does not authorize Defendants to mark-up the actual cost of those services to make a profit, nor does it allow Defendants to incur unnecessary fees.

115.Nevertheless, it is alleged, on information and belief, that Defendants mark-up prices charged by vendors and then, without disclosing the mark-up, assess borrowers' accounts for the higher, marked-up fee, so Defendants can earn a profit.

116.Defendants are aware that it is improper to mark-up and/or assess unnecessary fees on borrowers' accounts for default-related services. Therefore, Defendants fraudulently conceal these fees on borrowers' accounts, omitting any information about Defendants' additional profits, by identifying them on mortgage statements only as "Other Charges," "Other Fees," "Miscellaneous Fees" or "Corporate Advances."

117.Plaintiffs have made mortgage payments to Defendants on the subject Loan since 2005. Plaintiffs have a reasonable good faith belief that the claimed arrearages include improper excess charges and fees imposed by all Defendants without Plaintiffs' knowledge or consent, which are not allowed by law. Therefore, these monies are due to be credited back to Plaintiffs in full.

118.The actual amount of the arrearages on Plaintiffs' loan and the actual amount of money due from Defendants to Plaintiffs, and vice versa, are unknown to Plaintiffs and cannot be ascertained without an accounting of the receipts and disbursements of the aforementioned

JOSEPH R. MANNING, JR., ESQ.
4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

transactions.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against each Defendant, jointly and severally, as follows:

1. For damages sustained by Plaintiffs due to Defendants' wrongful acts in excess of the jurisdictional limits in an amount to be proven at trial;
2. Pursuant to Cal. *Bus. & Prof. Code* §17200, *et seq.*, that all Defendants, their employees, agents, representatives, successors, assigns, and all persons who act in concert with them, be permanently enjoined from making any false or misleading statements or falsely reporting negative credit to reporting agencies, and from selling the foreclosed property on an unlawfully procured debt;
3. Pursuant to Cal. *Bus. & Prof. Code* §17200, *et seq.*, that this Court make such orders or judgments necessary to prevent the use or employment by any Defendant of any act which violates §17200, *et seq.;* and to restore to any person in interest, any money or property, real or personal, which may have been acquired by means of any such act;
4. For disgorgement of all monies acquired by Defendants by means of any act or practice declared by this Court to be wrongful;
5. For interest on the sum at the rate of 10% per annum;
6. For punitive damages against Defendants due to their intentional and wrongful acts;
7. For all relief granted under California Civil Code §2924.12(b);
8. For reasonable attorney's fees and costs of suit, as allowed by law, and all other relief granted under Civil Code §2924.12(i);
9. For injunctive relief as set forth herein; and
10. For such other and further relief as this Court deems just and appropriate.

Dated: October 25, 2013

LAW OFFICES OF JOSEPH R. MANNING, JR.
A PROFESSIONAL CORPORATION

By: ______________________
Joseph R. Manning Jr., Esq.
Attorney for Plaintiff

JOSEPH R. MANNING, JR., ESQ.
4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

JOSEPH R. MANNING, JR., ESQ.
4667 MACARTHUR BLVD., STE. 150
NEWPORT BEACH, CA 92660

Exhibit A

Manning Law Office, APC

CIVIL TRIALS, FORECLOSURE DEFENSE, PERSONAL INJURY, CONSUMER PROTECTION & BANKRUPTCY COUNSEL

Attorney:
Joseph R. Manning, Jr.
Info@ManningLawOffice.com

Office: 949.200.8755
Facsimile: 866.843.8308
www.ManningLawOffice.com

4667 MacArthur Blvd., Ste. 150,
Newport Beach, CA, 92660

October 25, 2013

SunTrust Mortgage
P.O. Box 85024
Richmond, VA 23285-5024
Fax 877-589-0758/804-745-8115

Change In Circumstances Pursuant to Civil Code Section 2923.6
Cease and Desist from Continuing Further Foreclosure Activity

RE: Bryan M. Pavalko and Monica L. Pavalko
Loan Number: 0202021770

Dear Sir or Madam:

This office has been retained by Bryan M. Pavalko and Monica L. Pavalko with regard to real property, 8461 Clarkdale Dr., Huntington Beach, CA 92646, with Mortgage Servicer SunTrust Mortgage, Inc. ("SunTrust"). Attached as Exhibit A is the Letter of Authorization, signed by the borrowers, in our favor.

Pursuant to the 2013 California Homeowner's Bill of Rights, specifically Civil Code §2923.6, the mortgage servicer shall evaluate a borrower's application for a foreclosure prevention alternative if there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application, and that change is documented and submitted to the mortgage servicer. In addition, the mortgage servicer, mortgagee, beneficiary, or authorized agent **shall not record a notice of default or notice of sale, or conduct a trustee's sale,** while the complete foreclosure prevention alternative application is pending.

Please be advised that the borrowers have had a material change in financial circumstances since their previous application for a foreclosure prevention alternative with servicer. Specifically, the borrowers' household income has decreased due to having to take out a loan of $25,000 for their son's education and therefore having to allocate a portion of their income towards these additional expenses.

Additionally, as required by Civil Code §2923.6, the borrowers previously documented and submitted their financial changes and made efforts to contact SunTrust to advise it of this material change in their financial circumstances; however, SunTrust failed to acknowledge this change in the borrowers' finances and has failed to fairly review the borrowers for any and all available foreclosure prevention alternatives, specifically, a loan modification.

SunTrust's failure to fairly evaluate the borrowers for any and all available foreclosure prevention alternatives and SunTrust's current failure to review the borrowers in light of their material

Manning Law Office, APC

CIVIL TRIALS, FORECLOSURE DEFENSE, PERSONAL INJURY, CONSUMER PROTECTION & BANKRUPTCY COUNSEL

Attorney:
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Office: 949.200.8755
Facsimile: 866.843.8308
www.ManningLawOffice.com

4667 MacArthur Blvd., Ste. 150,
Newport Beach, CA, 92660

change in financial circumstances are violations of the Homeowner's Bill of Rights, specifically California Civil Code §2923.6.

Pursuant to the provisions of Civil Code §2923.6, **all foreclosure activity must continue to cease, and the borrower shall be evaluated** for foreclosure prevention alternatives, including, but not limited to, a loan modification, due to the material change in their financial circumstances.

Violations of the "Homeowner's Bill of Rights" are subject to regulatory agency enforcement. Material violations are also deemed to be a violation of a California charter or lender license and subject to agency administrative enforcement that could jeopardize continued engagement in California lending/servicing business. [Civil Code §§ 2924.12(d); 2924.19(d).]

Please confirm that the borrowers' application and request for any and all foreclosure prevention alternatives will be reviewed, that all foreclosure activity has been suspended, and advise our office by October 28, 2013 before 5:00 p.m., or this office will seek injunctive relief from the Court, under the California Homeowner's Bill of Rights.

If you have any questions, please call me directly at (949) 200-8755.

Sincerely yours,
LAW OFFICES OF JOSEPH R. MANNING, JR.
A PROFESSIONAL CORPORATION

Joseph R. Manning, Jr., Esq.

MANNING

Broadcast Report

P 1
10/25/2013 11:28
Serial No. A2X0011002009
TC: 90167

Addressee	Start Time	Time	Prints	Result	Note
18775890758	10-25 11:18	00:04:20	004/004	OK	
18047458115	10-25 11:27	00:00:57	000/004	No Ans	

Note TMR:Timer TX, POL:Polling, ORG:Original size setting, FME:Frame Erase TX, DPG:Page separation TX, MIX:Mixed Original TX, CALL:Manual TX, CSRC:CSRC, FWD:Forward, PC:PC-FAX, BND:Double-sided Binding Direction, SP:Special Original, FCODE:F-code, RTX:Re-TX, RLY:Relay, MBX:Confidential, BUL:Bulletin, SIP:SIP Fax, IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF, TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer, Refuse: Receipt Refused, Busy: Busy, M-Full: Memory Full, LOVR: Receiving length Over, POVR: Receiving page Over, FIL: File Error, DC: Decode Error, MDN: MDN Response Error, DSN: DSN Response Error, PRINT: Compulsory Memory Document Print, DEL: Compulsory Memory Document Delete, SEND: Compulsory Memory Document Send.

Manning Law Office, APC

CIVIL TRIALS, FORECLOSURE DEFENSE, PERSONAL INJURY, CONSUMER PROTECTION & BANKRUPTCY COUNSEL

Attorney:
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Info@ManningLawOffice.com

Office: 949.200.8755
Facsimile: 866.843.8308
www.ManningLawOffice.com

4667 MacArthur Blvd., Ste. 150,
Newport Beach, CA, 92660

October 25, 2013

SunTrust Mortgage
P.O. Box 85024
Richmond, VA 23285-5024
Fax 877-589-0758/804-745-8115

Change in C[illegible] Pursuant to Civil [illegible] Section 2923.6
Cease and [illegible] from Continuing [illegible] Activity

RE: Bryan M. [illegible] Monica [illegible]
Loan Num[illegible]

Dear Sir or Madam:

This office has been [illegible] M. [illegible] L. Pavalko with regard to real property, 8461 Clarkdal[illegible] Mortgage Servicer SunTrust Mortgage, Inc. ("SunTrust"). A[illegible] horization, signed by the borrowers, in our favor.

Pursuant to the 2013 Californi[illegible] ghts, specifically Civil Code §2923.6, the mortgage servicer shall evaluate a borro[illegible] for a foreclosure prevention alternative if there has been a material change in the borrower's financial circumstances since the date of the borrower's previous application, and that change is documented and submitted to the mortgage servicer. In addition, the mortgage servicer, mortgagee, beneficiary, or authorized agent shall not record a notice of default or notice of sale, or conduct a trustee's sale, while the complete foreclosure prevention alternative application is pending.

Please be advised that the borrowers have had a material change in financial circumstances since their previous application for a foreclosure prevention alternative with servicer, Specifically, the borrowers' household income has decreased due to having to take out a loan of $25,000 for their son's education and therefore having to allocate a portion of their income towards these additional expenses.

Additionally, as required by Civil Code §2923.6, the borrowers previously documented and submitted their financial changes and made efforts to contact SunTrust to advise it of this material change in their financial circumstances; however, SunTrust failed to acknowledge this change in the borrowers' finances and has failed to fairly review the borrowers for any and all available foreclosure prevention alternatives, specifically, a loan modification.

SunTrust's failure to fairly evaluate the borrowers for any and all available foreclosure prevention alternatives and SunTrust's current failure to review the borrowers in light of their material

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Joseph R. Manning, Jr. SBN 223381
Law Offices of Joseph R. Manning, Jr., APC
4667 MacArthur Blvd., Suite 150

Newport Beach, CA 92660
TELEPHONE NO.: 949-200-8755 FAX NO.: 866-843-8308
ATTORNEY FOR (Name): BRYAN M. PAVALKO and MONICA L. PAVALKO

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
10/29/2013 at 09:43:06 AM
Clerk of the Superior Court
By Diana Cuevas,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange
STREET ADDRESS: 700 Civic Center Drive West
MAILING ADDRESS: 700 Civic Center Drive West
CITY AND ZIP CODE: Santa Ana, CA 92702
BRANCH NAME: Central Justice Center

CASE NAME: Pavalko, et al. v. SunTrust, et al.

CIVIL CASE COVER SHEET	Complex Case Designation	CASE NUMBER: 30-2013-00684366-CU-OR-CJC
[X] Unlimited (Amount demanded exceeds $25,000) [ ] Limited (Amount demanded is $25,000 or less)	[ ] Counter [ ] Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	JUDGE: Judge Gregory H. Lewis DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
[ ] Auto (22)
[ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
[ ] Asbestos (04)
[ ] Product liability (24)
[ ] Medical malpractice (45)
[ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
[ ] Business tort/unfair business practice (07)
[ ] Civil rights (08)
[ ] Defamation (13)
[ ] Fraud (16)
[ ] Intellectual property (19)
[ ] Professional negligence (25)
[ ] Other non-PI/PD/WD tort (35)

Employment
[ ] Wrongful termination (36)
[ ] Other employment (15)

Contract
[ ] Breach of contract/warranty (06)
[ ] Rule 3.740 collections (09)
[ ] Other collections (09)
[ ] Insurance coverage (18)
[ ] Other contract (37)

Real Property
[ ] Eminent domain/Inverse condemnation (14)
[ ] Wrongful eviction (33)
[X] Other real property (26)

Unlawful Detainer
[ ] Commercial (31)
[ ] Residential (32)
[ ] Drugs (38)

Judicial Review
[ ] Asset forfeiture (05)
[ ] Petition re: arbitration award (11)
[ ] Writ of mandate (02)
[ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
[ ] Antitrust/Trade regulation (03)
[ ] Construction defect (10)
[ ] Mass tort (40)
[ ] Securities litigation (28)
[ ] Environmental/Toxic tort (30)
[ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
[ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
[ ] RICO (27)
[ ] Other complaint (*not specified above*) (42)

Miscellaneous Civil Petition
[ ] Partnership and corporate governance (21)
[ ] Other petition (*not specified above*) (43)

2. This case [ ] is [X] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. [ ] Large number of separately represented parties
   b. [ ] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [ ] Substantial amount of documentary evidence
   d. [ ] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought (*check all that apply*): a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [ ] punitive
4. Number of causes of action (*specify*): Four; Violation of CA Civil 2923.6; Negligence
5. This case [ ] is [X] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: October 28, 2013
Joseph R. Manning, Jr. SBN 223381
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

PROOF OF SERVICE

I am employed in the City and County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 725 South Figueroa Street, 38th Floor, Los Angeles, CA 90017.

On **November 27, 2013**, I served the following documents

DEFENDANTS SUNTRUST MORTGAGE, INC. AND BANK OF AMERICA, N.A.'S NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1332, 1441, AND 1446

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Attorney	Telephone/ Facsimile/Email	Party
Joseph R. Manning, Jr., Esq. THE LAW OFFICES OF JOSEPH R. MANNING, JR. 4667 MacArthur Blvd., Suite 150 Newport Beach, CA 92660	Tel (949) 200-8755 Fax (866) 843-8308	Attorneys for Plaintiffs BRYAN M. PAVALKO MONICA L. PAVALKO

☐ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

☒ (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express , an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated above, with fees for overnight delivery paid or provided for.

☐ (MESSENGER SERVICE) I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed and provided them to a professional messenger service for service.

☐ (FACSIMILE) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☐ (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

☐ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction this service was made and that the foregoing is true and correct.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **November 27, 2013**, at Los Angeles, California.

Laura Aispuro
(Type or print name)

(Signature)

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Josephine L. Staton and the assigned Magistrate Judge is Paul L. Abrams.

The case number on all documents filed with the Court should read as follows:

SACV13-1865-JLS(PLAx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

November 27, 2013
Date

By C. Sawyer
Deputy Clerk

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ Western Division 312 N. Spring Street, G-8 Los Angeles, CA 90012	☒ Southern Division 411 West Fourth St., Ste 1053 Santa Ana, CA 92701	☐ Eastern Division 3470 Twelfth Street, Room 134 Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☐)
Bryan M. Pavalko, Monica L. Pavalko

DEFENDANTS (Check box if you are representing yourself ☐)
SunTrust Mortgage, Inc., Bank of America, N.A.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
Joseph R. Manning, Jr. Esq. (SBN 223381)
The Law Offices of Joseph R. Manning, Jr., a Professional Corporation
4667 MacArthur Boulevard, Suite 150, Newport Beach, California 92660
Telephone: (949) 200-8755

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
AKERMAN LLP
Bryan M. Leifer (SBN 265837), Robert R. Yap (SBN 263763)
725 South Figueroa Street, 38th Floor, Los Angeles, California 90017-5433
Telephone: (213) 688-9500

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant
- ☒ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☒ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

- ☐ 1. Original Proceeding
- ☒ 2. Removed from State Court
- ☐ 3. Remanded from Appellate Court
- ☐ 4. Reinstated or Reopened
- ☐ 5. Transferred from Another District (Specify)
- ☐ 6. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No ☒ **MONEY DEMANDED IN COMPLAINT: $** 648,000

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. §§ 1332, 1441, and 1446

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☐ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☒ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS — PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

TORTS — PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accomodations
- ☐ 445 American with Disabilities-Employment
- ☐ 446 American with Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus/Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405 (g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405 (g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: SA CV13-01865

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s):

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Virginia (SunTrust) and North Carolina (Bank of America)

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange	

***Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): [signature] DATE: 11/27/2013

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

PROOF OF SERVICE

I am employed in the City and County of Los Angeles, California. I am over the age of 18 and not a party to the within action. My business address is 725 South Figueroa Street, 38th Floor, Los Angeles, CA 90017.

On **November 27, 2013**, I served the following documents

CIVIL COVER SHEET

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Attorney	Telephone/ Facsimile/Email	Party
Joseph R. Manning, Jr., Esq. THE LAW OFFICES OF JOSEPH R. MANNING, JR. 4667 MacArthur Blvd., Suite 150 Newport Beach, CA 92660	Tel (949) 200-8755 Fax (866) 843-8308	Attorneys for Plaintiffs BRYAN M. PAVALKO MONICA L. PAVALKO

☐ (MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

☒ (OVERNIGHT DELIVERY) I deposited in a box or other facility regularly maintained by Federal Express , an express service carrier, or delivered to a courier or driver authorized by said express service carrier to receive documents, a true copy of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed as stated above, with fees for overnight delivery paid or provided for.

☐ (MESSENGER SERVICE) I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed and provided them to a professional messenger service for service.

☐ (FACSIMILE) Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

☐ (E-MAIL or ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342

☐ (CM/ECF Electronic Filing) I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above pursuant to Fed.R.Civ.P.5(d)(1). "A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of an electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1). A copy of the NEF shall be attached to any document served in the traditional manner upon any party appearing pro se."

I declare under penalty of perjury that I am employed in the office of a member of the bar of this Court at whose direction this service was made and that the foregoing is true and correct.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on **November 27, 2013**, at Los Angeles, California.

Laura Aispuro
(Type or print name)

(Signature)

AKERMAN LLP
725 S. FIGUEROA STREET, SUITE 3800
LOS ANGELES, CALIFORNIA 90017
TEL.: (213) 688-9500 – FAX: (213) 627-6342